

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

LARRY ROGER BAISDEN, II, 298382,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. 2:19-CV-291-WKW
)
LEON BOLLING,)
)
Defendant.)

RECOMMENDATION OF THE MAGISTRATE JUDGE

I. INTRODUCTION

This 42 U.S.C. § 1983 action is pending before the court on an amended complaint filed by Larry Roger Baisden, an indigent state inmate. On March 4, 2020, after the defendant filed an answer, special report and supplements to the special report, Baisden filed a motion to dismiss in which he seeks dismissal of this case in favor of the defendant. Doc. 27 at 1.

Upon consideration of the plaintiff's motion to dismiss, the court concludes that this motion is due to be granted and that dismissal of this case without prejudice is the proper course of action.

II. DISCUSSION

Dismissal without prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure is committed to the sound discretion of this court “on terms that the court considers proper.” Absent some plain legal prejudice to the defendant, denial of the dismissal constitutes an abuse of this court’s discretion. *McCants v. Ford Motor Company, Inc.*, 781 F.2d 855 (11th Cir. 1986). Simple litigation costs, inconvenience to a defendant, and/or the prospect of a second or subsequent lawsuit do not constitute clear legal

prejudice. *Id.* See also *Durham v. Florida East Coast Railway Company*, 385 F.2d 366 (5th Cir. 1967). After review of the record, the court concludes that this case is due to be dismissed without prejudice on the motion of the plaintiff.

III. CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that:

1. The plaintiff's motion to dismiss be GRANTED.
2. This case be DISMISSED without prejudice.
3. No costs be taxed.

On or before **March 19, 2020**, the parties may file objections to the Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party objects. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and legal conclusions set forth in the Recommendation of the Magistrate Judge shall bar a party from a *de novo* determination by the District Court of these factual findings and legal conclusions and shall “waive the right to challenge on appeal the District Court’s order based on unobjected-to factual and legal conclusions” except upon grounds of plain error if necessary in the interests of justice. 11TH Cir. R. 3-1; see *Resolution Trust Co. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993) (“When the magistrate provides such notice and a

party still fails to object to the findings of fact and those findings are adopted by the district court the party may not challenge them on appeal in the absence of plain error or manifest injustice.”); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989).

DONE this 5th day of March, 2020.

/s/ Stephen M. Doyle _____
STEPHEN M. DOYLE
UNITED STATES MAGISTRATE JUDGE